IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5273 of 1991

Jahangir K. Farzandi,
since deceased by his LRs.

1a) Smt Parvenn Jahangir Farzandi, Petitioner.
Vs
1. Shri BomiKhadaram Deolaliwala
and ors. .. Respondents.

Mrs Anita A Agarwal, for the petitioner.
Mr S.S.Pandit, for respondent nos 1 to 5.
Mr V.B.Naik, for R.No.6.

CORAM : D.B.BHOSALE, J.

DATE : FEBRUARY 21, 2005.

P.C.

1. Heard the learned counsel for the parties.

2. This petition is arising out of the orders passed in the application Exhibit-5 filed by the petitioner and her deceased husband. It appears that on 25.11.1991 while issuing Rule this Court had granted the interim relief in terms of prayer clauses (c) and (d). However, the interim relief was vacated by order dated 3.12.1991. By that order, the respondents were directed to give written undertaking that they shall not interfere with the rights of the original plaintiffs, i.e. the petitioner and her deceased husband, nor will they interfere with their

beneficial rights of the use of their property or access thereto until appropriate orders are passed by the trial Court after hearing the parties. By that order, it was further provided that in the event of the respondents committing any breach of the undertaking, it shall be open to the present petitioners to pray for revival of the original interim relief granted by this Court. No such application was ever filed by the petitioner since 1991 till this date.

3. I am informed by the learned counsel appearing for the parties that some time in 2002 the suit itself came to be dismissed for default. That fact was brought to the notice of this Court on 15.4.2004 and at the request of the learned counsel for the petitioner, the matter was adjourned. Thereafter, the petitioner seems to have filed the applications for restoration of the suit and for condonation of delay on 8.4.2004, but till this date no orders are passed on those applications. It is thus clear that Regular Civil Suit No.361 of 1988 does not survive as of today and, therefore, the instant writ petition is liable to be dismissed as infructuous. Hence the following order.

(i) The writ petition is dismissed as infructuous.

(ii) It is open for the petitioner to adopt appropriate proceedings as and when the suit stands restored to file. The trial Court shall decide the applications for restoration of the suit and for condonation of delay on merits in accordance with law. In the event the suit is restored to file, same may be disposed of within four months from the date of restoration.

(iii) While giving such directions, I shall not be understood to have expressed any opinion on the application filed by the petitioner for restoration or it shall not be construed to mean that the delay in filing the application for restoration of the suit should be condoned and the suit be restored to file.
(iv) Rule is discharged.

(D.B.Bhosale, J.)